

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JERRY BUCKNER

Plaintiff,

v.

F/N/U/ VARGAS

Defendant.

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Civil Action No. 3:20-cv-562

Judge Richardson/Frensley

REPORT AND RECOMMENDATION

On August 3, 2020, the Court referred this prisoner civil rights action for pretrial proceedings under 28 U.S.C. § 636(b)(1)(A) and (B), Rule 72(b) of the Federal Rules of Civil Procedure, and the Local Rules of Court. Docket No. 7.

Plaintiff Jerry Buckner filed this action while an inmate at the Davidson County Sheriff's Department. His complaint concerns events that occurred when he was being housed with the Davidson County Sheriff's Office. Docket No. 1 Plaintiff filed this pro se and *in forma pauperis* action pursuant to 42 U. S. C. § 1983, seeking relief against prison officials and Trinity Food Service based on allegations that his constitutional rights were violated. Docket No. 2.

Upon initial review, the Court concluded that Plaintiff stated arguably nonfrivolous claims under the First Amendment and RLUIPA against Officer Vargas. Docket No. 7. Plaintiff's other claims and Defendants were dismissed. *Id.* Pursuant to the August 3, 2020 Order, the Clerk mailed to Plaintiff a service packet for Defendant Vargas which he was to complete and return to the clerk's office within 30 days of the date of the Order so process could issue in the case. *Id.* To date, Plaintiff has not returned the completed service packets or otherwise made any type of response to the August 3, 2020 Order. The docket for the case indicates Plaintiff has had no contact with the Court or made any filings since filing a pleading styled "Cruel and Unusual Punishment – Neglect"

on July 20, 2020. Docket No. 5.

Rule 4(m) requires that the defendants be served with process within 90 days of the date this action was filed and provides that, in the absence of a showing of good cause by the plaintiff for why service has not been timely made, the Court "must dismiss" the action without prejudice. Because Defendants in this case have not been served with process within the time period set out in Rule 4(m), this action should be dismissed.


It is also well settled that Federal trial courts have the inherent power to manage their own dockets, *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1961), and Rule 41(b) of the Federal Rules of Civil Procedure permits the Court to dismiss an action upon a showing of a clear record of delay, contumacious conduct, or failure to prosecute by the plaintiff. *See Carter v. City of Memphis, Tennessee*, 636 F.2d 159, 161 (6th Cir. 1980). Plaintiff's failure to serve or even attempt to serve the Defendant as directed or to otherwise take any activity in the case for over one year indicates that he has lost interest in prosecuting his case.

For the reasons set forth herein, the Court respectfully recommends this action be **DISMISSED WITHOUT PREJUDICE** in accordance with Rules 4(m) and 41(b) of the Federal Rules of Civil Procedure.¹

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report

¹ This Report and Recommendation provides notice to Plaintiff of the Court's intention to *sua sponte* dismiss the action, and the fourteen-day period for filing objections provides him with the opportunity to show good cause why the action should not be dismissed.

and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986).



JEFFERY S. FRENSLEY
United States Magistrate Judge